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O.I.P.E. - 1A930
 PATENT & TRADEMARK OFFICE

AMENDMENT TRANSMITTAL LETTER (Large Entity)		MAR 07 2006	Docket No. YOR920010540
Applicant(s): Yashchin et al.			

Application No. 10/040,474	Filing Date 01/09/2002	Examiner A. Baturay	Customer No. 30743	Sup Art Unit 2155	Confirmation No. 2599
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Invention: **SMART MESSENGER**

COMMISSIONER FOR PATENTS:

Transmitted herewith is an amendment in the above-identified application.

The fee has been calculated and is transmitted as shown below.

CLAIMS AS AMENDED					
	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST # PREV. PAID FOR	NUMBER EXTRA CLAIMS PRESENT	RATE	ADDITIONAL FEE
TOTAL CLAIMS	13 -	20 =	0	x \$50.00	\$0.00
INDEP. CLAIMS	2 -	3 =	0	x \$200.00	\$0.00
Multiple Dependent Claims (check if applicable) <input type="checkbox"/>					\$0.00
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT					\$0.00

☒ No additional fee is required for amendment.

☐ Please charge Deposit Account No. _____ in the amount of _____

☐ A check in the amount of _____ to cover the filing fee is enclosed.

☒ The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account **50-0510**

☒ Any additional filing fees required under 37 C.F.R. 1.16.

☒ Any patent application processing fees under 37 CFR 1.17.

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Michael E. Whitham

Signature

Dated: **March 7, 2006**

Michael E. Whitham
Reg. No. 32,635

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ <div style="text-align: center;">(Date)</div>
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<div style="text-align: center;">Typed or Printed Name of Person Mailing Correspondence</div>

cc:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Emmanuel Yashchin

Confirmation No. 2599

Serial No. 10/040,474

Group Art Unit 2155

Filed January 9, 2002

Examiner Alicia Baturay

For SMART MESSENGER

Box AF
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

BOX "AF"
RESPONSE UNDER 37 C.F.R. § 1.116
---EXPEDITE PROCEDURE---
EXAMINING GROUP 2155

CONDITIONAL PETITION TO REMOVE PREMATURE INDICATION OF
FINALITY OF REJECTION AND AMENDMENT UNDER 37 C.F.R. 1.111

Sir:

An Appeal Brief was filed in the USPTO in the above-identified application on October 31, 2005. In response, the Examiner re-opened prosecution and entered an office action with completely new grounds of rejection, and has identified the office action as a Final Rejection. The Examiner took the position in the office action that the Final Rejection was necessitated by an amendment filed by the applicant. However, no amendments were filed by the applicant, and the claims at issue in the appeal brief were entered by filing of the notice of appeal and the appeal brief (not entry 7(b) on the advisory action mailed August 12, 2005). As such there is no legally cognizable reason for making the office action a final rejection, and the office action prematurely cuts off the applicant's ability to amend the claims and respond to the new grounds of rejection as a matter of right. Therefore, the office action should be revised to eliminate the notation that the action is a final rejection, or the finality should be otherwise withdrawn.

The indication in the office action that the application is under final rejection is premature and is an error on the part of the USPTO, and therefore, no fees should be required for withdrawing the finality of the rejection. If fees are due, the applicant has hereby made a conditional petition to remove the premature indication of finality, and the Commissioner is authorized to charge attorney's

deposit account 50-0510 (IBM Yorktown) for the petition fees.

In response to the Office Action mailed January 13, 2006, please amend the above-identified patent application as follows:

Listing of the Claims: begins on page 3

Remarks: begin on page 6